

**IN THE DISTRICT COURT OF APPEAL  
FOR THE FIRST DISTRICT, STATE OF FLORIDA**

LEONARDO LYNCH,

Petitioner,

v.

Case No. 1D19-3106

FLORIDA DEPARTMENT OF  
LAW ENFORCEMENT,

Respondent.

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**RESPONSE TO MOTION FOR ATTORNEYS FEES AND COSTS**

Pursuant to Florida Rules of Appellate Procedure 9.300(a) and 9.400(b), Respondent, Florida Department of Law Enforcement (“FDLE”), hereby responds to Petitioner’s Motion for Attorneys Fees and Costs and avers as follows.

“Florida Rule of Appellate Procedure 9.400 contemplates an allowance of attorney’s fees only if otherwise authorized by substantive law.” *Nationwide Mut. Ins. Co. v. Nu-Best Diagnostic Labs, Inc.*, 810 So. 2d 514, 515 (Fla. 5th DCA 2002) (citations omitted). Moreover, “the supreme court has reiterated that attorney’s fees statutes should be strictly construed.” *Id.* at 516 (citations omitted).

Petitioner asserts that he is entitled to attorneys’ fees pursuant to section 120.595(5), Florida Statutes (2019), because the actions of FDLE precipitating his Petition was a gross abuse of discretion. Petitioner argues that FDLE has no good faith basis in either fact or law for failing to render a final decision. However,

Petitioner has failed to pursue the next step in the administrative process under both Florida and Federal regulations, which is to contact the agency that submitted the record that disqualified him from purchasing a firearm. *See* Fla. Admin. Code R. 11C-8.001(5) *and* 28 C.F.R. §25.10(c). Since the administrative process has not been completed, FDLE cannot issue a final decision.

Furthermore, FDLE has a good faith basis to consider its actions pursuant to section 790.065, Florida Statutes (2018), to be ministerial acts because its role under section 790.065 is similar to its role under section 943.059, Florida Statutes (2019), which was held to be a ministerial act, *See Rowell v. State, Florida Dept. of Law Enf't*, 700 So. 2d 1242, 1243 (Fla. 2d DCA 1997), and because the legislature defines the criteria that disqualifies a potential purchaser of a firearm. *See Solomon v. Sanitarrians' Registration Bd.*, 155 So. 2d 353, 356 (Fla. 1963) (“[O]fficial action is considered ministerial when it is arrived at as the result of the performance of a specific duty arising from legislatively designated facts. A ministerial duty is one which is positively imposed by law to be performed at a time and in a manner or upon conditions which are specifically designated by the law itself absent any authorization of discretion to the agency.”) (citation omitted). Ministerial acts by an agency are not final orders, as defined by section 120.52(7), Florida Statutes (2019). *Rowell*, 700 So. 2d at 1243. Thus, FDLE cannot render a “final order” in this matter if it is merely performing a ministerial act. Moreover, while this Court has held that

agencies have a clear legal duty to file “final orders” with the agency clerk, FDLE has not found or received any legal authority that suggests that it has a clear legal duty to file documents that are not “final orders” with the agency clerk.

Since the administrative process has not been completed, FDLE has a good faith basis to consider actions pursuant to section 790.065 to be ministerial acts, and ministerial acts are not “final orders” pursuant to section 120.52(7), FDLE cannot be found to have committed a gross abuse of discretion by deferring its final decision in this matter or by failing to render a “final order” by filing it with the agency clerk.

Petitioner also argues that FDLE failed to render a final order for the improper purposes of avoiding judicial review and obfuscating the process. However, the process is clear and Petitioner merely chooses not to follow it. Moreover, Petitioner is not foreclosed from pursuing judicial review if a non-approval by the FDLE is considered a ministerial act because he may file petition for writ of mandamus in the trial court or an action against FDLE, the appropriate New York agency, or the United States to resolve the matter. *See Rowell*, 700 So. 2d at 1244-45; 18 U.S.C. §925A; 28 C.F.R. §25.10(f). Therefore, the FDLE’s interpretation of its duties is not designed to avoid judicial review or obfuscate the process.

### CONCLUSION

WHEREFORE, Respondent requests that this Court deny the Motion for Attorneys Fees and Costs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 3, 2019, I electronically filed this document by using the Florida Courts E-Filing Portal and that I served a copy of this document through the E-Filing Portal upon the following:

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